

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 618 of 2014

- Dharmendra Kumar Gupta S/o Badri Lal Gupta, aged about 36 years, R/o Durparoad, Korba, Tahsil and District Korba (C.G.)

---- Appellant/Claimant

Versus

1. Dev Kumar Markam, S/o Man Singh Markam, aged about 25 years, R/o Village Bandhakhar Pali, District Korba (C.G.)
(Driver of the offending vehicle)
2. Gopal Agrawal S/o Banwari Lal Agrawal, R/o M/s Gourav Construction Company, Agroha Maarg, Korba through- K.K. Modi, Infront of SBI Champa, District Janjgir-Champa (C.G.)
(Owner of the offending vehicle)
3. The Oriental Insurance Company Ltd. Through Branch Manager, The Oriental Insurance Company Ltd. Commercial Complex, Transport Nagar, Tahsil & District Korba (C.G.)
(Insurer of the offending vehicle)

---- Respondents/Non-applicants

For Appellant	:	Shri Sanjay Patel, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

22.02.2019

1. The Claimant/Injured has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal (FTC), Korba (C.G.) vide award dated 10.04.2014 passed in Claim Case No. 42 of 2013.
2. The injured- Claimant/Appellant- Dharmendra Kumar Gupta, aged about 36 years, claimed compensation of Rs.14,20,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident.
3. Brief facts of the case are that on 12.02.2011 when the Claimant- Dharmendra Kumar Gupta was going alongwith Hemant Gupta (since deceased) by a Santro Car bearing registration No. CG-12/D/5338 which was being driven by the Claimant, it got hit against the offending vehicle Trailer bearing registration No.

CG-11/AB/0302 which was parked on the middle of the road in a negligent manner by non-applicant No.1 without parking light or indicator. As a result of the said accident, Dharmendra Kumar Gupta sustained grievous injuries and Hemant Gupta also sustained grievous injuries and succumbed to those injuries. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

4. The learned Tribunal, in the impugned award, has assessed the compensation of Rs.3,48,271/- but, the Tribunal found non-applicant No.1 as well as the Appellant/Claimant guilty of negligence to the cause of accident to the extent of 50:50 and awarded a compensation of Rs.1,74,500/- in favour of the Appellant/Claimant with interest @ 7% per annum from the date of application till its realization and has fastened the liability upon the non-applicant No.3 along with non-applicants No.1 and 2 jointly and severally to pay compensation to the Claimant.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant/Claimant submits that income of the Claimant has wrongly been considered by the Tribunal as Rs. 13,067/- per month whereas it should have been Rs.18,000/- per month; due to accident, on the advice of Doctor, the Claimant had to take bed-rest for six months and during this period, he would not work but the Tribunal has considered loss of only two months income as Rs.26,134/-. He further submits that amount Rs.5,000/- towards pain and suffering; Rs.3,000/- towards conveyance and Rs.2,000/- towards special diet awarded by the Tribunal is also on the lower side and the same deserves to be enhanced suitably. He also submits that the Tribunal has not awarded any amount towards treatment in future to the Claimant, therefore, some amount may be granted under this head.

7. On the other hand, learned counsel for Respondent No.3/Insurance Company supports the impugned award and submits that there was 50%

contributory negligence on the part of the Claimant and the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

8. Heard learned counsel for the parties and perused the material available on record.

9. In instant case, on 12.02.2011 the Claimant was going along with Hemant Gupta (since deceased) on a Santro Car bearing registration No.CG-12/D/5338 which was being driven by Claimant and it got hit against the offending vehicle Trailer bearing registration No. CG-11/AB/0302 which was parked on the road without any indicator or parking light by non-applicant No.1. As a result thereof, the Claimant sustained grievous injuries, therefore, the Tribunal found non-applicant No.1 as well as the Appellant/Claimant guilty of negligence to the cause of accident to the extent of 50:50% and thus considering the facts and circumstances of the case, the manner in which the accident occurred and the evidence adduced by the parties, this Court is of the opinion that the Tribunal was fully justified in holding the injured/Claimant equally responsible for unfortunate accident.

10. As regard income of the Claimant, though the Claimant has pleaded that the Claimant is having its own business in the name of Nandi Dairy and is earning Rs.18,000/- per month, however, no evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding actual income, the income of the Claimant is considered as Rs.15,000/- per month and as such awarded Rs.60,000/- for four months towards loss of income during treatment. Further, looking to the injury caused to the Appellant, his hospitalization from 13.03.2011 to 29.03.2011 in Apollo Hospital, Bilaspur, as per Ex.-P/51, Claimant sustained head injury and looking to the head injury with compound depressed fracture left orbital frontal bone with left frontal contusion and was operated. Further, Rs.5,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.20,000/-; Rs.3,000/- towards conveyance is enhanced to Rs.7,000/- and Rs.2,000/- towards special diet is enhanced to Rs.5,000/-. So far as

argument relating to non-grant of amount towards treatment in future to the Claimant is concerned, this Court is of the opinion that the Claimant is a resident of Korba and treatment was going on at Bilaspur and he definitely used to come Bilaspur for further treatment and check-up, therefore, he is entitled to Rs.10,000/- towards treatment in future. Thus, the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	For medical treatment	Rs.3,12,137/- (as awarded by the Tribunal)
2.	Loss of four months income of the Claimant @ Rs.15,000/- per month	Rs.60,000/-
3.	For pain and suffering	Rs.20,000/-
4.	For conveyance	Rs.7,000/-
5.	For special diet	Rs.5,000/-
6.	For treatment in future	Rs.10,000/-
	Total Amount	Rs.4,14,137/-
	After deducting 50% on account of contributory negligence on the part of the Claimant from the above total amount	Rs.2,07,069/- which is round up comes to Rs.2,07,100/-
	Total Compensation	Rs.2,07,100/-

11. Since the Tribunal has already awarded Rs.1,74,500/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.32,600/- with interest @ 7% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge